



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1709, 1719, 1734, 1738, 1739, 1770, and 1773

[Docket No. RUS-22-AGENCY-0053]

RIN 0572-AC61

Policy on Audits of RUS Awardees

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; confirmation and response to comments.

SUMMARY: The Rural Utilities Service (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development Mission area, published a final rule with comment in the **Federal Register** on February 6, 2023, to revise its Policy on Audits to change the title, remove an unnecessary report, update terminology, clarify Agency contacts and filing requirements, and update or remove any outdated references. The document also made conforming changes to other regulations. These changes provide uniformity and consistency for all RUS awardees. Through this action, RUS is confirming the final rule as it was published and providing responses to the public comments that were received.

DATES: The final rule published February 6, 2023, at 88 FR 7557, is confirmed as of May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Jurleme Grey, Chief, Technical Accounting Review Branch, External Compliance Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Telephone: (202) 540-9200, Email: compliance.tarb@usda.gov.

SUPPLEMENTARY INFORMATION: Rural Development is a mission area within the USDA comprising RUS, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the

quality of life for all rural Americans. The mission is met by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving housing, business, and infrastructure throughout rural America.

The final rule that published February 6, 2023 (88 FR 7557), included a 60-day comment period that ended on April 7, 2023. The intent of the changes outlined in the final rule are to update regulations, clarify audit policy, and streamline procedures. The uniformity and consistency for all awardees should benefit both the awardees and Agency. Professional standards and guidance provide a framework for conducting high quality audits. The Agency received comments from 3 respondents. The following are the comments received and the Agency's responses:

Respondent One: Aurélien Enthoven

Comment: The "Policy on Audits of Awardees" should address the disparate impact of the RUS on Native American Tribe borrowers.

Agency response: We disagree. This policy is specific to RUS Awardees who *do not* meet the requirements of non-Federal entities subject to 2 CFR part 200, subpart F. Per 2 CFR 200.1, the definition of non-Federal entity is a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Respondent Two: Eide Bailly, CPAs and Business Advisors

Comment (1): We believe that revising 7 CFR 1773.3(e) to read as follows would further clarify RUS's audit requirements for nonprofit organizations: "Subpart F of 2 CFR part 200 shall apply to audits of RUS electric and telecommunications cooperatives and for-profit telecommunications awardees only if the awardee has expenditures of federal awards from Federal agencies other than the Department of Agriculture RUS and has contractually agreed with another Federal agency (e.g., Federal Emergency Management Agency) to provide a financial audit performed in accordance with 2 CFR part 200, subpart F. If the

awardee has expenditures of federal awards from Federal agencies other than the Department of Agriculture RUS, all applicable Department of Agriculture RUS expenditures shall be included in the audit performed in accordance with 2 CFR part 200, subpart F. ”

Agency response (1): We disagree with the comment. This policy is specific to all RUS electric and telecommunication Awardees, which are defined as entities that have an outstanding RUS or Federal Financing Bank (FFB) loan or loan guarantee and/or a continuing responsibility under a grant agreement with RUS. The language in § 1773.3(e) uses language to clarify when the audit should not be in accordance with 2 CFR part 200, subpart F. We believe the current language in § 1773.3(e) is sufficient as it relates specifically to RUS electric and telecommunications awardees only.

Comment (2): The requirement in 1709.21(a), 1719.13(b), 1734.8(a), 1738.254(b)(1), and 1739.20(a) conflict with other guidance because it requires all nonprofit organizations to obtain a Uniform Guidance audit in accordance with 2 CFR 200 Subpart F; however, it appears that RUS’s updates intend to impose a Uniform Guidance audit requirement on a nonprofit organization receiving RUS funding only when the nonprofit organization has received other Federal awards that would require the performance of the audit in accordance with 2 CFR 200 Subpart F.

Agency response (2): We disagree with the comment. We do not believe this language creates a conflict, as the primary language in §§ 1709.21(a), 1719.13(b)(1), 1734.8(a), 1738.254(b)(1), and 1739.20(a) states that if the awardee (*borrower, grantee, or recipient*) is a for-profit entity, an electric or telecommunications cooperative, or any other entity *not covered by paragraph (b) (paragraph (b)(2))*, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773.

And paragraph (b) (paragraph (b)(2)) states that if the awardee (*borrower, grantee, or recipient*) is a non-Federal entity, as defined in 2 CFR 200.1, the awardee shall provide an audit in accordance with subpart F of 2 CFR part 200.

The Agency believes this language is sufficient.

Respondent Three: American Institute of CPAs (AICPA). This respondent provided a detailed response with the following items highlighted as their overarching comments:

Comment (1): (1) Clarify what the effective date means for borrowers.

Agency response (1): Thank you for pointing this out. We will provide additional guidance on the website to assist in explaining the effective date. In addition, RUS will notify current awardees of the revisions to this part.

Comment (2): RUS should be aware that the Government Accountability Office has issued an Exposure Draft that proposes changes to the Government Auditing Standards (GAS).

Agency response (2): The Agency acknowledges that the standards are being revised and will review those changes, when available, to see what changes that may entail. However, the desire is not to hold these needed revisions up until such time as updates are done and have been analyzed to determine what changes RUS needs to make.

Comment (3): Paragraphs 1773.9 and 1773.32 include details about the GAS that fail to accurately reflect the requirements and mischaracterize that the results of an audit are an opinion of the effectiveness of internal controls and the role of the audit.

Agency response (3): RUS agrees to amend the language in §§ 1773.9(b) and 1773.32(a) introductory text and (a)(2) and (3) with the next revision. This language was in the current version and has not been changed or amended with this revision. RUS disagrees with the suggested removal of § 1773.32(a)(4) and believes the current language is sufficient.

Comment (4): Other sections of 1773 are overly prescriptive. (a) Part 1773.40 seems to require that audit documentation evidence that *all* regulatory assets and liabilities be tested for compliance which implies that sampling is not acceptable. That is not consistent with standard auditing procedures. (b) Similar issues exist in Parts 1773.42 and 1773.45.

Agency response (4): Sections 1773.40 and 1773.45 were not amended thru this final rule and therefore, these sections were not open for public comment. Sections 1773.40 and 1773.45 apply to all RUS Electric and Telecom awardees, stating they must follow Financial Accounting Standards Board (FASB) requirements. Electric awardees have additional requirements to receive RUS approval for all regulatory assets or liabilities. Section 1773.42 was amended to remove all contents and reserve the section.

Comment (5): The amendment to Parts 1719.13(b)(1) and 1738.254 includes an incorrect reference to 1773.5 and should be 1773.4.

Agency response (5): RUS agrees. The reference in §§ 1719.13(b) and 1738.254(b) will be amended to § 1773.4 in the next revision. RUS does not consider this a significant deviation because while § 1773.4 addresses RUS approval of the auditor, § 1773.5 references the specific requirements for an auditor to be considered satisfactory to RUS.

Comment (6): Amendment to Part 1770.13(a) does not agree with changes made to 1773.3.

Agency response (6): The only change made to § 1770.13(a) was to remove the title of 7 CFR part 1773 in the last sentence. Your comments will be considered in future revisions to these parts.

Comment (7): RUS uses the terms must, shall and should in the various parts impacted by the FR notice. We recommend RUS eliminate “shall” throughout the various Parts, define what is meant by “must” and “should” and then ensure the appropriate term is used throughout the Parts.

Agency response (7): We understand your concern. We are leaving the final rule as is, but will look at the use of must, should, and shall for when future updates are made.

Comment (8): We believe the RUS intent is to not include any appendices or exhibits to Part 1773. However, we noted the following document on the USDA Web site at: https://www.rd.usda.gov/files/UET_Bulletin_1773-1.pdf. This document appears to include

several exhibits including illustrative auditor reports. If RUS plans to include any type of exhibit including information that would be issued by the auditor, we ask that the AICPA be provided an opportunity before it is issued.

Agency response (8): The RUS Bulletin 1773-1 will be officially rescinded when this final rule becomes effective. The Agency will ensure the bulletin is removed from the website.

The Agency appreciates the time that AICPA took to review, comment and question each section and will use that when the Agency next looks to update these sections.

No change to the rulemaking is necessary at this time. The RUS appreciates the comments received. The Agency confirms the final rule without change.

Andrew Berke
Administrator
Rural Utilities Service

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